

See Marks Decl. at ¶ 8 re Exhibits C, D and E, which states:

Plaintiffs marked Exhibits C, D and E “confidential”. These exhibits therefore fall within the protections of the Stipulated Protective Order filed herein on January 25, 2005 and may only be filed under seal and only “upon prior application to and approval by the court.” Id. at ¶ 8. I will seek consent of plaintiffs’ attorney to waive the “confidential” designation of these documents, and if that is not forthcoming, will seek the approval of the Court to file these exhibits under seal. I will make this request to plaintiffs when the Motion for Summary Judgment and Concise Statement of Facts are served, so they will have access to these exhibits from the time the motion is served.

EXHIBIT D